

RECORDATION NO. 13227-B Filed 1428

DEC 24 1981 -9 50 AM  
INTERSTATE COMMERCE COMMISSION

SAUL DUFF KRONOVET

441 LEXINGTON AVENUE  
NEW YORK, N.Y. 10017

(212) 687-5600

1-258A022

No.

DEC 24 1981

Date

Fee \$ 50.00

December 16, 1981

ICC Washington, D. C.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Recordation Office  
Interstate Commerce Commission  
12th and Constitutional Avenues, N.E.  
Room 2303  
Washington, D.C. 20423

Gentlemen:

We request in this letter recordation of the management agreement between

ARBOX Three Corp.  
c/o Saul Duff Kronovet, Esq.  
441 Lexington Avenue  
New York, New York 10017

and

34 limited partnerships known as:

New England Associates No. 1 (through 33 inclusive  
L.P. and 35)  
c/o Saul Duff Kronovet, Esq.  
441 Lexington Avenue  
New York, New York 10017

Please find enclosed one original signed copy and two photocopies of the management agreement executed by the parties thereto and acknowledged. An attestation of a notary public appears as the last page of the photocopies.

The transaction involves the management of eighty-four used, three-year-old general purpose 50-foot, 6-inch, 70-ton boxcars. The cars covered by the management agreement are listed on Schedule I hereto. The cars were purchased pursuant to a conditional sale agreement which was recorded with your office (No. 13227) on August 14, 1981.

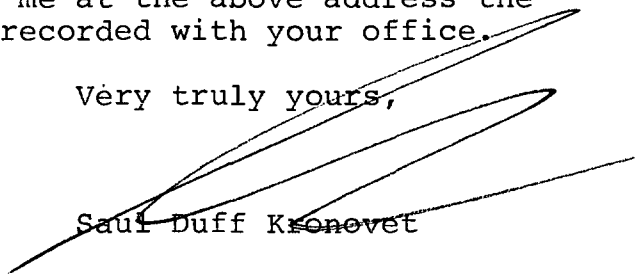
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Recordation Office  
Interstate Commerce Commission  
December 16, 1981  
Page Two

Accompanying the management agreement and this letter of transmittal is the required recordation fee of \$50.00.

Please return to me at the above address the original executed copy as recorded with your office.

Very truly yours,



Saul Duff Krenovet

SDK:mp  
Enclosures

Owner  
(New England  
Associates No. — L.P.)

Boxcars

No. 1	150494-150497, 150499-150501 and 150503-150508
No. 2	150513-150515
No. 3	150517
No. 4	150519 and 150521
No. 5	150522-150524
No. 6	150526 and 150527
No. 7	150529
No. 8	150531-150533
No. 9	150534-150536
No. 10	150538
No. 11	150540 and 150542
No. 12	150543-150545
No. 13	150546-150548
No. 14	151012
No. 15	151013 and 151015
No. 16	151017 and 151018
No. 17	151019 and 151020
No. 18	151023
No. 19	151025-151027
No. 20	151028-151030

owner  
(New England  
Associates No. — L.P.)

Boxcars

No. 21	151031-151033
No. 22	151035 and 151036
No. 23	151037
No. 24	151040 and 151041
No. 25	151043-151045
No. 26	151046
No. 27	151049 and 151050
No. 28	151052
No. 29	151055-151057
No. 30	151058 and 151059
No. 31	151061-151063
No. 32	151065 and 151066
No. 33	151067-151069
No. 35	151074 and 151075

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

December 24, 1981

Saul Duff Kronovet  
441 Lexington Avenue  
New York, N. Y. 10017

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/24/81 at 9:50AM , and assigned recordation number(s). 13227-B

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 13227-B  
DEC 24 1981 - 9 52 AM  
INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE APPLICABLE SECURITIES ACT OF ANY STATE. NO OFFER TO SELL, SALE OR OTHER TRANSFER OF THIS AGREEMENT OR THE RIGHTS HEREUNDER MAY BE MADE UNLESS A REGISTRATION UNDER SUCH ACTS IS IN EFFECT, OR AN EXEMPTION FROM THE REGISTRATION PROVISIONS OF SUCH ACTS IS THEN APPLICABLE.

#### MANAGEMENT AGREEMENT

THIS AGREEMENT, dated as of the 14th day of September, 1981, between ARBOX THREE CORP., a New York corporation ("ARTE"), and each of the Delaware limited partnerships listed on Schedule I hereto (each such partnership being hereinafter called an "Owner" and collectively referred to as the "Owners").

#### W I T N E S S E T H:

WHEREAS, pursuant to a Conditional Sale Agreement dated as of July 28, 1981 between New England Merchants National Bank (the "Bank") and the Owners, each Owner has agreed to purchase a certain number of railroad boxcars referred to in the Conditional Sale Agreement;

WHEREAS, each Owner desires to retain the services of ARTE as such Owner's agent for managing the Boxcars of such Owner listed on Schedule I hereto (the boxcars of each Owner covered by this Agreement being referred to as such "Owner's Boxcars" and the boxcars of all the Owners being referred to generically as the "Boxcars"); and

WHEREAS, ARTE is willing to accept such appointment as agent, and to perform management services for the account of each Owner pursuant to the terms and conditions hereof;

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties agree as follows:

1. Appointment of Agent; Acceptance. Subject to and in accordance with the terms and conditions of this Agreement, each Owner hereby severally appoints ARTE as agent of such Owner to manage the operation of such Owner's Boxcars for the account of and on behalf of such Owner and ARTE hereby accepts such appointment.

2. Term. The term of this Agreement with respect to each Owner's Boxcars shall commence as of the Closing Date under the Conditional Sale Agreement and shall, unless sooner terminated as hereinafter provided, continue until the later of

(a) August 1, 1986 and (b) the date on which ARTE or such Owner shall elect to terminate this Agreement with respect to such Owner's Boxcars by written notice to the other (which date shall not be less than twelve months from the date on which such notice is received by the other).

3. Delivery, Acceptance and Ownership of Boxcars.

(a) ARTE will, as soon as practical, inspect the Boxcars. As of the Closing Date under the Conditional Sale Agreement ARTE agrees to deliver to each Owner (i) a fully executed copy of this Agreement and (ii) a Certificate of Insurance evidencing the insurance required by Section 4(e)(i) hereof.

(b) Unless otherwise agreed by ARTE and any Owner, the following initial fees and expenses shall be for the account of such Owner and paid by such Owner on demand by ARTE: (i) movement and storage expenses related to transportation of such Owner's Boxcars to the tracks of a railroad owned or controlled by ARTE, (ii) ICC filing fees with respect to the Management Agreement, (iii) costs incurred by ARTE in inspecting such Owner's Boxcars (including fees of any independent inspector engaged by ARTE for such purpose), (iv) costs of repainting, stencilling and lettering each Boxcar with the paints, marks, legends and insignia employed by ARTE, (v) the first annual insurance premiums for insurance for each of such Owner's Boxcars and (vi) the cost of necessary repairs and maintenance (it being understood that certain of such may be the responsibility of the Bank under the Conditional Sale Agreement, in which case ARTE shall seek such reimbursement from the Bank on the terms set forth in Section 4(f)(i).

(c) The parties agree that each Owner shall at all times be and remain the owner of such Owner's Boxcars, and that nothing in this Agreement is in any way intended to grant any legal or equitable ownership interest or property right in such Owner's Boxcars to ARTE or to any railroad whose markings appear on the Boxcars. Further, ARTE will not directly or indirectly create or suffer to exist, any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to such Owner's Boxcars in favor of persons claiming through or under ARTE or through or under any railroad whose markings appear on such Owner's Boxcars, and shall indemnify such Owner and hold such Owner harmless from and

against all claims, damages and expenses arising out of any such third party claim.

4. Powers, Duties, and Responsibilities of ARTE.

The agency and management functions, and the powers, duties and responsibilities of ARTE hereunder, shall include those specifically set forth in this Section 4 and such other powers, duties and responsibilities as may be set forth elsewhere in this Agreement:

(a) ARTE shall manage and arrange for the utilization of each Owner's Boxcars and the integration of such Boxcars with the service fleet of boxcars which may be managed by ARTE for its own account and the accounts of others, and shall use its best efforts to achieve a high degree of utilization of each Owner's Boxcars for the benefit of such Owner and for the protection of such Owner's interest therein.

(b) ARTE shall, as soon as practical after inspection of each Owner's Boxcars, at the expense of such Owner, make available for such Owner's Boxcars the markings of a railroad owned or controlled by ARTE, and shall arrange to have such Owner's Boxcars lettered with proper railroad markings and the name and/or other insignia used by such railroad or such other railroad as ARTE shall determine. Such markings, name and/or insignia shall comply with all applicable regulations of the ICC and the Association of American Railroads ("AAR") and of any other government or industry authority the rules or regulations of which may be applicable.

(c) ARTE shall prepare for filing and shall cause to be filed in a timely manner all documents relating to the registration, maintenance and record keeping functions of the Boxcars in accordance with the rules and regulations of the AAR, ICC, Department of Transportation ("DOT") and any other government or industry authority the rules or regulations of which may be applicable. Such matters shall include, but shall not be limited to, the preparation and timely filing of documents as follows: (i) ARTE shall file a counterpart of this Agreement delivered to each Owner hereunder with the ICC pursuant to Section 11303 of Title 49 of the United States Code; (ii) ARTE shall cause the registration of each Owner's Boxcars in the Official Railway Equipment Register ("ORER") and the Universal Machine Language Equipment Register file maintained by the AAR ("UMLER") directing, among other things, that all correspondence and remittances from railroads using the boxcars be to ARTE or its designee; and (iii) ARTE shall prepare and cause to be filed such reports as may be required from time to time by the ICC and/or other regulatory agencies



with respect to each Owner's Boxcars. Any record keeping performed by ARTE and all records of payments and charges and all correspondence relating to each Owner's Boxcars shall be separately recorded and maintained by ARTE in a form suitable for reasonable inspection by such Owner, or any person designated by either, from time to time during regular business hours of ARTE. ARTE shall supply each Owner with such information regarding the use of such Owner's Boxcars as such Owner may reasonably request. ARTE shall furnish factual information reasonably requested by such Owner in connection with Federal, State, Canadian, Provincial and Mexican tax returns.

(d) ARTE shall perform all car accounting services for the Boxcars and shall furnish each Owner unaudited quarterly reports not more than 45 days after the end of each calendar quarter containing detailed information with respect to such Owner's revenues, expenses and Utilization Rate (as hereinafter defined). ARTE shall also furnish each Owner on or before March 15 of each year an unaudited annual report setting forth the same information on an annual basis and all additional information which shall be reasonably necessary for such Owner to prepare his federal income tax returns.

(e) (i) ARTE will, at all times while this Agreement is in effect, use its best efforts to keep each Owner's Boxcars adequately insured, at the expense of such Owner, against such risks and losses and in such amounts as is reasonable and customary in the railway industry.

(ii) If at any time the insurance maintained on the Boxcars shall lapse or fail to be in such amounts as is reasonable and customary in the railway industry, ARTE shall give written notice to each Owner of the same. ARTE shall notify each Owner promptly with respect to any default in payment of any premium or of any other act or omission of ARTE or of any other person of which ARTE has knowledge which might invalidate, or render unenforceable, or result in a lapse of or reduce, any insurance coverage maintained on the Boxcars pursuant to this Agreement.

(f) (i) ARTE shall monitor, make, or cause to be made, such inspections of and maintenance and repairs to each Owner's Boxcars, including replacement of parts, as may be required to maintain each Owner's Boxcars in good condition (ordinary wear and tear excepted) and in good working order in compliance with all applicable rules and regulations of government and industry authorities relating to the qualification of the Boxcars for use in the Railroad Interchange System throughout the term of this Agreement. All expenses of inspection,

maintenance and repairs (including transportation charges to repair facilities and storage awaiting repairs) attributable to each Owner's Boxcars shall be paid by each Owner (but ARTE shall have the right to pay such expenses on behalf of such Owner from such Owner's Gross Revenues). ARTE agrees that it shall reasonably pursue all claims against third parties for damage to each Owner's Boxcars on behalf of and at the expense of such Owner. Each Owner agrees that, with respect to any claim or right against any third party relative to the physical conditions of such Owner's Boxcars, such Owner shall, to the extent reasonably required to permit ARTE to seek recovery from such third party, assign such claim or right to ARTE. ARTE may elect to require each Owner to advance reasonable costs to be incurred by ARTE on such Owner's behalf in any particular case.

(ii) Notwithstanding the provisions of Section 4(f)(i), ARTE shall have the right to assign or subcontract its maintenance obligations pursuant to that Section to a maintenance contractor selected by it. In the event that ARTE so elects, and in the event that the maintenance contractor makes a separate maintenance contract available to any Owner, then the provisions of such separate maintenance contract shall govern maintenance provided that such contract is acceptable to ARTE and such Owner. Any such separate maintenance contract shall be terminable by ARTE, with or without cause and for its own convenience. Further, once in effect, each Owner shall not terminate such separate maintenance contract without the consent of ARTE. Each Owner shall look solely to the maintenance contractor (and not to ARTE) for performance of maintenance services in the event of a separate maintenance contract between such Owner and a maintenance contractor.

(g) ARTE shall make, or cause to be made, in either case at the expense of each Owner, all alterations or modifications to such Owner's Boxcars required by government or industry regulations.

(h) ARTE may pay in each Owner's name and for each Owner's account all personal property taxes and other taxes, charges, assessments or levies, if any, imposed upon or against such Owner's Boxcars of whatever kind or nature. If requested by an Owner and at such Owner's expense, ARTE, in its discretion, may defend against or appeal from any such charges, all such actions to be in the name of such Owner unless ARTE otherwise elects.

(i) ARTE agrees that its rights hereunder and the rights of any railroad with which ARTE, on behalf of the Owners, shall arrange for use of the Boxcars in accordance herewith, shall be subject and subordinate to the rights of the Bank under the Conditional Sale Agreement.

5. Receipt and Disbursement of Revenue.

(a) ARTE shall collect, on behalf of each Owner, all mileage charges, car hire and other revenues paid by railroads with respect to the use of such Owner's Boxcars. ARTE shall be authorized to grant car hire claim relief and make other adjustments or refunds in favor of any railroad using the such Owner's Boxcars on such terms and conditions as ARTE deems appropriate. It is specifically intended that ARTE be authorized to determine car hire rates applicable to each Owner's Boxcars to the fullest extent permitted by law. Such mileage charges, car hire and other revenues received with respect to such Owner's Boxcars, less adjustments or refunds paid, are referred to herein as the "Gross Revenues". ARTE may, on behalf of each Owner, pay the expenses designated in Section 5(c) as may be required to be paid with respect to such Owner's Boxcars. Such expenses paid on behalf of such Owner by ARTE are referred to herein as the "Designated Expenses". Unless the Owner elects at anytime not to participate in the Revenue Pool as described in 5(b), then each Owner's Gross Revenues and Designated Expenses will be computed as therein provided. The excess of each Owner's Gross Revenues over each Owner's Designated Expenses is referred to herein as the "Aggregate Net Revenues". Each Owner's Aggregate Net Revenues for each calendar quarter are referred to herein as such "Owner's Quarterly Net Revenues".

(b) Each Owner shall, unless ARTE receives notice to the contrary in writing from such Owner as provided in subparagraph (vii), be deemed to have elected to participate in the pooling of such Owner's Gross Revenues and Designated Expenses with the Gross Revenues and Designated Expenses of each other Owner (the "Revenue Pool"). If such election has been made (and if one or more other owners has similarly elected), then such participation shall be as provided herein.

(i) Gross Revenues and Designated Expenses with respect to each Owner's Boxcars, the revenues of which are included in the Revenue Pool, shall be allocated to (and, as apportioned, be the Gross Revenues and Designated Expenses of) each other Owner in the Revenue Pool.

(ii) Apportionment shall be effected with respect to each calendar quarter on the basis of the number of days in such quarter that each Owner's Boxcar was included in the Revenue Pool (i.e., from the Closing Date under the Conditional Sale Agreement to the date of withdrawal). As to each Boxcar of each Owner, such apportionment rate shall be based on days of participation as a ratio of the total number

of boxcar days of participation in the Revenue Pool. However, ARTE shall, pursuant to a mathematical formula, adjust the apportionment rate to reflect the fact that different boxcars included in the Revenue Pool may have different rate entitlements from time to time by virtue of age and cost differences between boxcars.

(iii) Gross Revenues received in any calendar quarter shall be allocated among each Owner in accordance with the apportionment rate in effect with respect to the quarter in which such revenues were earned. Except to the extent ARTE determines as to any particular item of Designated Expenses to apportion such item in accordance with the apportionment rate in effect with respect to the quarter in which such expense was incurred, Designated Expenses paid in any calendar quarter shall be allocated among each Owner in accordance with the apportionment rate in effect with respect to the quarter in which such expenses were paid.

(iv) It is understood that only those items of income expressly included in Gross Revenues are to be pooled (i.e., excluded are insurance proceeds or other casualty damage proceeds or the proceeds from sale or other disposition of a participant's Boxcars, etc.) and only those items of expense expressly included in Designated Expenses are to be pooled (i.e., excluded are collision and other casualty expenses, liability obligations for personal injury or property damage, expenses of sale or other disposition of a Boxcar, principal of and interest on debt, etc.).

(v) Gross Revenues received and Designated Expenses paid after termination of a Revenue Pool or an Owner's participation therein shall be allocated to, and be the revenues and expenses of each Owner in accordance with subparagraphs (i) (ii) and (iii) hereof.

(vi) Withdrawal of an Owner's Boxcar from the Revenue Pool shall be effected automatically upon the loss or destruction of (or damage beyond repair to) such Boxcar. Further, such withdrawal shall be automatically effected upon termination of ARTE's management of such Owner's Boxcar.

(vii) Each Owner may terminate participation in the Revenue Pool as to all Boxcars owned by such Owner effectively as of the last day of any calendar quarter by written notice to ARTE given not less than thirty (30) days prior to the close of such quarter.

(viii) No Owner participating in the Revenue Pool shall gain, by reason of such participation, any ownership or other economic interest whatsoever in any Boxcar of any other Owner participating therein, it being understood and agreed that the Revenue Pool is merely a bookkeeping arrangement as to the pooling of certain designated items of income and expense of a limited period. No Owner participating in the Revenue Pool shall have any contractual relationship with any other Owner participating in the Revenue Pool pursuant to this Agreement, and the sole contractual relationship to which each Owner is a party being that between such Owner and ARTE.

(c) ARTE shall have, in addition to the rights and duties of ARTE under Section 16 hereof, the right to make disbursements on behalf of each Owner from such Owner's Gross Revenues of the following expenses applicable with respect to the Boxcars owned by such Owner:

(i) the management fee payable to ARTE as provided in Section 7 hereof;

(ii) movement and storage expenses;

(iii) costs of maintenance and repair (including expenses of transportation and storage) for which such Owner is responsible hereunder;

(iv) maintenance fees payable to a maintenance contractor designated in accordance herewith;

(v) personal property, sales and similar taxes;

(vi) costs of casualty insurance;

(vii) liability obligations for personal injury or property damage; and

(viii) any initial fees for which such Owner is responsible under Section 3(b).

(d) ARTE shall distribute Quarterly Net Revenues to each Owner, quarterly, within 45 days after the close of each calendar quarter. Such distribution shall be accompanied by a report to each Owner detailing items of income and expense. Each Owner shall not be entitled to interest with respect to funds held by ARTE for such Owner's account prior to distribution.

(e) In the event that Gross Revenues are insufficient to discharge any expenses (including Designated Expenses) for which an Owner is responsible, such Owner shall pay any deficiency in such expenses or promptly reimburse ARTE for payment of the same, as the case may be.

6. Conflicts of Interest. Each Owner understands that ARTE may be managing other boxcars for its own account and for the account of others, including persons associated with ARTE and that ARTE may have conflicts of interest between the management of such Owner's Boxcars and other boxcars owned, controlled or managed by ARTE. Although there can be no assurance that such Owner's Boxcars will earn revenues equal to those of other railroad equipment owned, controlled, or managed by ARTE, ARTE agrees to use reasonable efforts to integrate such Owner's Boxcars into the fleet of railroad equipment owned, controlled, or managed by ARTE and to manage such Owner's Boxcars in a manner consistent with the management by ARTE of railroad equipment, if any, for its own account.

7. Management Fees.

(a) In consideration of the management services provided by ARTE, each Owner agrees to pay to ARTE the management fees described in this Section 7. Such management fees shall be due and payable by each Owner to ARTE quarterly on the last day of each calendar quarter, and ARTE shall have the right to pay such fees on behalf of such Owner from such Owner's Gross Revenues.

(b) As used herein, the following terms have the meanings shown:

(i) The "Utilization Rate" means the percentage determined by dividing (A) the per diem revenues collected with respect to such Owner's Boxcars during the Collection Period (as defined below) less (B) the sum of (x) adjustments and refunds paid with respect to such Owner's Boxcars during such period and (y) movement charges paid with respect to such Owner's Boxcars during such period (exclusive of movement charges related to maintenance or incurred prior to ARTE management) by (c) the maximum amount of per diem revenues that would have been earned with respect to such Owner's Boxcars during the Earnings Period (as defined below) had such Boxcars earned such revenues each hour of the Earnings Period. If an Owner is participating in a Revenue Pool, the Utilization Rate shall be

computed on the basis of the average Utilization Rate of all Boxcars in the Revenue Pool.

(ii) The "Collection Period" means the twelve month period comprising the four calendar quarters last ended.

(iii) The "Earnings Period" means the twelve month period commencing two months prior to the Collection Period and ending two months before the end of the Collection Period.

(c) Each Owner agrees to pay ARTE a management fee in an amount equal to (i) 10% of such Owner's Gross Revenues received in a calendar quarter up to the Gross Revenues generated by a Utilization Rate of 92% or less, and (ii) 100% of such Owner's Gross Revenues received in that calendar quarter generated by a Utilization Rate in excess of 92%. For example, if the Utilization Rate over the preceding four quarters is 95%, then 92/95 of such Owner's Gross Revenues in the calendar quarter will be subject to a management fee of 10% and 3/95 will be subject to a management fee of 100%.

(d) Until ARTE's management of Boxcars for the account of an Owner has been in effect for a full Collection Period and full Earnings Period, the Utilization Rate shall be determined based on the actual periods elapsed from commencement of management of each Boxcar. However, management fees paid with respect to such initial periods shall be adjusted based on the Utilization Rate for the first full Collection Period and Earnings Period hereunder.

(e) All of each Owner's Gross Revenues which are attributable, on an accrual basis, to the period during which ARTE manages such Owner's Boxcars but are collected after termination or expiration of ARTE's management, shall be subject to a management fee of 10% of such Gross Revenues in lieu of a fee based on Utilization Rate.

(f) All of each Owner's Gross Revenues collected with respect to a particular Boxcar of such Owner in the calendar month in which ARTE's management of such Boxcar commences and in the succeeding month shall be deemed collected on the first day of the next succeeding month.

(g) In the event of a change in the method of determining per diem charges which makes the formula set forth in this Section 7 materially adverse to either of ARTE or an Owner, ARTE and such Owner will negotiate in good faith to

determine a revised formula and, in the event the parties are unable to agree, such issues shall be resolved by arbitration in accordance with the Rules of the American Arbitration Association. The parties agree that they shall effect such modifications in this Section 7 as the arbitrators determine to be appropriate.

8. Express Powers Delegated to ARTE. ARTE shall have the power, in addition to the general powers set forth in Section 4:

(a) To affix to each Owner's Boxcars the railroad markings of a railroad owned or controlled or designated by ARTE;

(b) To enter into arrangements with other railroads to grant per diem reclaim or other per diem relief when deemed prudent to maximize revenues;

(c) To determine (and vary) the per diem rates applicable to each Owner's Boxcars; and

(d) To affix its insignia to each side of each Owner's Boxcars.

9. Assignment.

(a) This Agreement is not assignable by ARTE except as provided in Section 4(f); provided, however, that this Agreement may be assigned by ARTE in connection with the merger or consolidation of ARTE into or with a corporation which is subject to the reporting requirements of the Securities Exchange Act of 1934, pursuant to Section 13 or 15(d) of that Act, or as part of the sale of substantially all of the assets of ARTE to such a corporation, provided that notice of such merger, consolidation, or sale shall be given to the Owner prior to the effective date thereof.

(b) Except to the extent that the Bank has a security interest in each Owner's rights hereunder as granted under the Conditional Sale Agreement, this Agreement may not be assigned by an Owner without the prior written consent of ARTE. Such consent may be withheld in ARTE's sole discretion and may



be conditioned upon receipt by ARTE of such documents and instruments deemed appropriate by counsel for ARTE, including an agreement recognizing the assignee's assumption of such Owner's obligations hereunder, including such Owner's obligations with respect to accrued management fees.

10. Compliance with Applicable Laws and Rules and Regulations. In connection with ARTE's management of the Boxcars, ARTE will comply, and will cause every railroad whose markings appear on each Owner's Boxcars to comply and to the extent feasible will use its best efforts to cause each user of each Owner's Boxcars to comply, in all material respects, with all laws, rules, or administrative decisions of the jurisdictions in which operation of the Boxcars may extend, with the Interchange Rules of the AAR and with all rules, regulations, edicts, and/or decisions of the DOT, the ICC, the AAR and any other government or industry authority exercising any power or jurisdiction with respect to each Owner's Boxcars, to the extent that such may affect the title, revenues, operation or use of such Owner's Boxcars in any manner whatsoever; provided, however, that ARTE may, in good faith, at its expense, contest the validity or application of any such law or rule in any reasonable manner, provided further that ARTE is reasonably of the opinion that contesting such law or rule will not adversely affect the property or rights of such Owner.

11. Indemnification. Each Owner and ARTE acknowledge, agree and covenant that ARTE is entering into this Agreement solely as the agent of such Owner.

(a) Each Owner agrees that he shall not attempt to enter into contracts or commitments in the name, or on behalf of, ARTE, or to bind ARTE in any manner or respect whatsoever except insofar as may be consistent with ARTE's status as agent under this Agreement. Further, each Owner agrees to indemnify and hold ARTE harmless from any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorneys' fees, expenses and judgments which may hereafter be asserted against or sustained by ARTE by reason of a claim of a third party against ARTE based on or relating to such Owner's Boxcars and arising out of operation or use thereof or such Owner's title thereto, except a claim which gives rise to ARTE's obligation to indemnify such Owner hereunder.

(b) ARTE agrees that it shall not attempt to enter into contracts or commitments in the name, or on behalf of, any Owner, or to bind such Owner in any manner or respect

whatsoever, except insofar as may be consistent with ARTE's authority as agent under this Agreement. ARTE agrees to indemnify and hold harmless each Owner from and against any and all claims, demands, causes of action (at law or equity), costs, damages, reasonable attorney's fees, expenses and judgments which may hereafter be asserted against or sustained by such Owner by reason of any act or omission by ARTE (i) if a result of negligence, fraud or bad faith of ARTE, (ii) if a result of any misrepresentation or breach of any covenant or warranty made by ARTE hereunder, or (iii) if a result of any act of ARTE outside the scope of ARTE's authority granted under this Agreement.

(c) Except as otherwise provided herein, ARTE shall not be liable to any Owner for any loss or liability incurred in connection with any act performed or omitted in accordance with the terms of this Agreement, nor for negligence or for any other matter, except for any loss or liability incurred in connection with the fraud, willful misconduct or gross negligence of ARTE. Each Owner shall indemnify and save harmless ARTE from and against any and all liability, loss, cost, expense or damage incurred or sustained by ARTE to the fullest extent permitted by law.

12. Default. The occurrence of any of the following events shall be Events of Default hereunder:

(a) The non-payment by ARTE within thirty (30) days after written notice of non-payment of any sum required hereunder to be paid by ARTE;

(b) The non-payment by an Owner within thirty (30) days after written notice of non-payment of any sum required hereunder to be paid by such Owner;

(c) Any material representation or warranty by ARTE under this Agreement shall prove to be incorrect in any material respect;

(d) The default by a party under any other material term, covenant or condition contained in this Agreement which is not cured within thirty (30) days after written notice thereof from the other party;

(e) Any affirmative act of insolvency by ARTE, or the filing by ARTE of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or the filing of any such petition or action against ARTE that is not dismissed within sixty (60) days after such filing against

ARTE, or the appointment of any receiver or trustee to take possession of the properties of ARTE unless such appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment;

(f) The subjecting of any of the property of ARTE to any levy, seizure, assignment, application or sale by any creditor or governmental agency which substantially impairs the capacity of ARTE to fulfill its obligations under this Agreement; and

(g) The assignment of this Agreement by either party in violation of Section 9 hereof.

### 13. Remedies Upon Default.

(a) Upon the occurrence of any Event of Default with respect to any Owner's Boxcars the non-defaulting party may (i) terminate this Agreement with respect to such Owner's Boxcars or (ii) proceed by appropriate court action to enforce performance of this Agreement by the defaulting party and/or (iii) sue to recover direct financial damages which result from a breach hereof, and such defaulting party shall bear the other party's costs and expenses, including reasonable attorney's fees, in securing such enforcement or financial damages.

(b) In the event of default by ARTE, each Owner may, by notice in writing to ARTE, terminate ARTE's right to act as such Owner's agent with respect to such Owner's Boxcars; and thereupon such Owner may demand and be entitled to delivery of such Owner's Boxcars pursuant to Section 14(b) hereof (except that the costs and expenses of assembling, delivery, storage and transportation of such Owner's Boxcars shall in such case be at the expense of ARTE) and/or may, by such Owner's agents, enter upon any premises where such Owner's Boxcars may be located and take possession of them free from any rights of ARTE as managing agent. ARTE hereby expressly waives any and all claims against such Owner and such agents for damages of whatever nature in connection with the termination of ARTE's management rights as to such Owner's Boxcars in any reasonable manner.

(c) In the event of default by ARTE, each Owner may demand that an escrow account be established to receive all car hire revenues, mileage charges and other revenues, and any other sums accruing and payable with respect to the use of such Owner's Boxcars, and ARTE shall take all necessary action to establish the escrow account and to provide for the direct

payment of all such car hire revenues, mileage charges and other sums directly to the escrow account for payment to such Owner, as provided in this Agreement (subject to the payment by the escrow agent of any management fees earned and payable to ARTE under this Agreement). Such escrow account will be maintained at a national bank with a capital and undivided surplus of at least \$25,000,000.

(d) In the event of default by an Owner, ARTE, by notice in writing to such Owner, may terminate its obligations hereunder with respect to such Owner's Boxcars; provided, however, in exercising such right of termination ARTE shall act in a commercially reasonable manner.

(e) Each and every power and remedy herein specifically given to each Owner or ARTE shall be in addition to every other power and remedy herein specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by each Owner or ARTE. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of any Owner or ARTE in the exercise of any such power or remedy and no extension of time for any payment due hereunder shall impair any such power or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted by either any Owner to ARTE or ARTE to any Owner shall not otherwise alter or affect the respective rights and obligations of such Owner and ARTE. The acceptance of any payment of any Owner or ARTE after it shall have become due hereunder shall not be deemed to alter or affect the respective rights and obligations of such Owner and ARTE with respect to any subsequent payments or defaults therein.

14. Termination. In addition to the termination rights provided in Section 13, this Agreement shall terminate as provided in this Section.

(a) This Agreement shall terminate with respect to any Owner's Boxcar sold (except as otherwise provided in Section 9(b) hereof), lost or destroyed or damaged beyond repair.

(b) At the expiration or upon termination of this Agreement as to any Owner's Boxcar, ARTE will terminate

its management of such Owner's Boxcar and cause delivery of the same to such Owner at such place as such Owner shall designate in writing to ARTE. It is agreed that (except as provided in Section 13(b) hereof) assembling, delivery, storage, and transporting of each Owner's Boxcars is at the expense and risk of such Owner. The obligations of ARTE and such Owner will no longer be governed by this Agreement upon removal from such Owner's Boxcars of their railroad markings, which removal shall be at such Owner's expense and shall be accomplished immediately upon the arrival of such Owner's Boxcars at the point designated by such Owner. The placement of such markings as may be designated by any Owner shall be accomplished by ARTE at such Owner's request and expense. Notwithstanding the above, if such Owner's Boxcars are on, or are delivered to a railroad line of ARTE or its affiliates upon any expiration or termination of this Agreement, ARTE shall grant immediate access to such Owner or such Owner's agents, if requested, to remove the railroad markings from such Owner's Boxcars and place thereon such markings as may be designated by such Owner and shall deliver them at such Owner's expense to a connecting carrier for shipment. ARTE, at the expense of such Owner, will arrange for storage of such Owner's Boxcars for such period of time as shall be reasonably requested by such Owner. From and after termination of this Agreement with respect to a Boxcar all revenues earned by such Boxcar through the date of its return to the point designated by the Owner of such Boxcar shall be paid to such Owner when and as received after deducting the management fee provided in Section 7 and any expenses incurred in connection with such Boxcar.

(c) All records maintained by ARTE with respect to each Owner's Boxcars shall remain available for inspection by such Owner or such Owner's designated representatives for a reasonable time from time to time during regular business hours of ARTE following any termination of this Agreement.

(d) This Agreement shall terminate with respect to an Owner's Boxcars in the event that the Conditional Sale Agreement is terminated by such Owner pursuant to the terms of Section 2.6 thereof or such Owner's Boxcars are returned to the Bank or otherwise disposed of as a result of a declaration of acceleration of the Conditional Sale Indebtedness pursuant to the Conditional Sale Agreement.

15. Representations, Warranties and Covenants of ARTE. ARTE represents, warrants and covenants to each Owner that:

(a) ARTE is a corporation duly organized, validly existing and in good standing under the laws of the

State of New York and has the corporate power and authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to own or hold under lease its properties and to perform its obligations under this Agreement.

(b) The entering into and the performance of this Agreement will not violate any judgment, order, law or regulation applicable to ARTE, or result in any breach of or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of ARTE or on the Boxcars pursuant to any instrument to which ARTE is a party or by which it or its assets may be bound.

(c) There is no action or proceeding pending or threatened against ARTE before any court or administrative agency or other governmental body which can be reasonably expected to result in any material adverse effect on the business, properties and assets, or condition, financial or otherwise, of ARTE.

(d) ARTE is not a party to any agreement or instrument or subject to any charter or other corporate restriction which, so far as ARTE can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of ARTE or the ability of ARTE to perform its obligations under this Agreement.

(e) The railroad whose markings are placed on the Boxcars shall be eligible and entitled to receive per diem and mileage charges on the Boxcars in possession of other railroads.

16. No Intention to Create Partnership. Notwithstanding that ARTE is managing Boxcars for the accounts of all the Owners and may be managing Boxcars for the accounts of other owners under agreement which may be similar to this Agreement as regards the rights and obligations of the parties, it is understood and agreed that this Agreement binds only the parties hereto and is severable with respect to each Owner's Boxcars. ARTE will not act or purport to act for or in the name of the Owners collectively or as an entity, it being expressly understood that any actions taken on behalf of any Owner will be taken as agent for such Owner, severally and individually. The parties hereto expressly agree that this Agreement is not intended to create a partnership, joint venture or other entity between each Owner and ARTE or among

the Owners and/or among the Owners and other owners of boxcars who may have entered into similar agreements and/or ARTE.

17. Accounts Receivable. ARTE agrees that it shall at all times follow normal, reasonable and prudent collection procedures in the collection of accounts receivable arising from car hire revenues, mileage charges and other revenues accruing from the operation and use of each Owner's Boxcars. Such procedures will provide the same monitoring and collection efforts which ARTE expends on accounts receivable arising with respect to other boxcars which may be owned, leased or managed by ARTE, and ARTE shall provide the same efforts and procedures used by ARTE with respect to other boxcars owned, leased or managed by it to monitor and settle any claims by railroads operating the Boxcars for credits or repayments with respect to any such car hire revenues, mileage charges and other sums. ARTE shall within 30 days after the end of each calendar quarter provide to each Owner an aging of the accounts receivable arising with respect to such Owner's Boxcars (or, if such Owner is a participant therein, the Revenue Pool).

18. Miscellaneous.

(a) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. No permitted assignment hereof shall relieve the assignor from any obligations hereunder, whether arising before or after the date of such assignment.

(b) Each party hereto shall promptly and duly execute and deliver to the other party such further documents, assurances, releases and other instruments, and take such further actions, including and necessary filings and the execution of a power of attorney of each Owner, as the other party may reasonably request, in order to more fully carry out the intent and purpose of this Agreement, and to confirm each Owner's ownership of such Owner's Boxcars during the continuance of and upon termination of this Agreement.

(c) It is understood that upon the termination of ARTE's management as to any or all of any Owner's Boxcars, such Owner shall no longer be entitled to use the ORER and UMLER Car Initials and Numbers and other designations (the "Designations") that are presently the property of ARTE or a railroad owned or controlled by ARTE. Each Owner hereby authorizes ARTE, and ARTE shall be required as provided in Section 14(b), upon such termination at ARTE's expense to take all steps necessary to promptly change the Designations on such

Owner's Boxcars no longer managed under this Agreement, and each Owner agrees to execute any and all documents requested by ARTE to transfer to ARTE such rights such Owner may have acquired to such Designations, if any. ARTE agrees to prepare, at ARTE's expense, such documentation, which in its opinion, is necessary to change all Designations on such Owner's Boxcars.

(d) Any notice required or permitted to be given by one party to another hereunder shall be properly given when made in writing, deposited in the United States mail, registered or certified, postage prepaid, addressed to:

Each Owner at:

Saul Duff Kronovet  
441 Lexington Avenue  
New York, New York 10017

ARBOX THREE CORP. at:

Saul Duff Kronovet  
441 Lexington Avenue  
New York, New York 10017

or to such other address as may be designated in a notice given in accordance herewith.

(e) This Agreement contains the entire agreement of the parties hereto pertaining to the management and operation of each Owner's Boxcars. Except as otherwise provided herein, this Agreement may not be modified or amended, except by express, written agreement signed by both parties hereto. No waiver of any obligation of either party hereto shall be construed as a continuing waiver of any such obligation under any provision hereof.

(f) This Agreement shall be governed by and construed according to the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date of acceptance hereof by ARTE.

WITNESS:

Each Limited Partnership Listed  
on Schedule I hereto:

By   
Saul Duff Kronovet  
General Partner for each  
such Limited Partnership



ATTEST:

ARBOX THREE CORP.

[Corporate Seal]

By



For ARBOX THREE CORP.:

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

On this 9<sup>th</sup> day of *January*, 1981, before me personally appeared Saul Duff Kronovet, to me personally known, who being by me duly sworn, says that he is the Chief Executive Officer of ARBOX THREE CORP., that the seal affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal.

*Rachel Opas Fried*  
\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires:

RACHEL OPAS FRIED  
NOTARY PUBLIC, State of New York  
No. 31-4625707  
Qualified in New York County  
~~Commission Expires March 30, 1982~~

STATE OF NEW YORK )  
: SS.:  
COUNTY OF NEW YORK )

On this 9<sup>th</sup> day of *January*, 1981, before me personally appeared Saul Duff Kronovet, to me personally known who, being by me duly sworn, says that he is the sole General Partner of each Delaware Limited Partnership listed on Schedule 1 to the foregoing instrument, and that such instrument was signed on behalf of each said partnership by authority of its Limited Partnership Agreement, and he acknowledged that the execution of the foregoing instrument was the free act and deed of each said partnership.

*Rachel Opas Fried*  
\_\_\_\_\_  
Notary Public  
Commission Expires:

[NOTARIAL SEAL]

RACHEL OPAS FRIED  
NOTARY PUBLIC, State of New York  
No. 31-4625707  
Qualified in New York County  
Commission Expires March 30, 1982

Owner  
(New England  
Associates No. — L.P.)

Boxcars

No. 1	150494-150497, 150499-150501 and 150503-150508
No. 2	150513-150515
No. 3	150517
No. 4	150519 and 150521
No. 5	150522-150524
No. 6	150526 and 150527
No. 7	150529
No. 8	150531-150533
No. 9	150534-150536
No. 10	150538
No. 11	150540 and 150542
No. 12	150543-150545
No. 13	150546-150548
No. 14	151012
No. 15	151013 and 151015
No. 16	151017 and 151018
No. 17	151019 and 151020
No. 18	151023
No. 19	151025-151027
No. 20	151028-151030

Owner  
(New England  
Associates No. — L.P.)

Boxcars

No. 21	151031-151033
No. 22	151035 and 151036
No. 23	151037
No. 24	151040 and 151041
No. 25	151043-151045
No. 26	151046
No. 27	151049 and 151050
No. 28	151052
No. 29	151055-151057
No. 30	151058 and 151059
No. 31	151061-151063
No. 32	151065 and 151066
No. 33	151067-151069
No. 35	151074 and 151075